

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

Singler - Stearns
PL-CR
(47)

9142

FILE: B-192931

DATE: February 13, 1979

MATTER OF: Stafford County Environmental
Association; King George
Environmental Association

DIGEST:

[Protest Alleging Improper Award of Sludge Removal Contract]

Protests alleging improper award on bases⁸¹⁵ that environmental impact assessment was not made and that low bidder does not have financial capability to perform contract for sludge removal are dismissed; need for environmental impact statement is for determination by agency concerned and affirmative determinations of prospective contractors responsibility to perform contract are no longer reviewed by GAO except under circumstances not present here.

The Stafford County Environmental Association (Stafford), Stafford County, Virginia, and the King George Environmental Association (King George), King George County, Virginia, protest the award of a contract to Dano Resources Recovery, Inc. (Dano), the low bidder, under District of Columbia Invitation for Bids (IFB) No. 0003-AA-23-0-8-RJ, for the disposal of filter cake and sludge generated at the Blue Plains Treatment Plant, Washington, D.C., which under the contract will be barged down the Potomac River to a processing plant in Virginia. The protesters assert that an environmental impact assessment and a critical design review should have preceded the procurement, and that Dano does not have the financial capability to perform the contract.

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The protesters do not make clear who--the District of Columbia, the State of Virginia or the counties concerned, the U.S. Army Corps of Engineers, or Dano--they believe should have performed this environmental impact assessment or conducted the critical review of the design of the processing plant. Also, while they allege "grave health hazards" and inconsistency with

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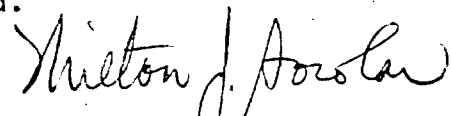
state and Federal public welfare legislation, the protesters do not identify any particular Federal law or regulation which allegedly has been violated. Under these circumstances, we have no basis for considering the protests, since at best the allegations relate to matters within the administrative functions of the procurement agency.

In this connection, we have held that both the adequacy of an environmental impact statement and the determination of whether such a statement is necessary at all are matters for determination by the agency concerned, and in proper circumstances, by the courts, rather than this Office. See Arlington Ridge Civic Association, B-181015, December 23, 1974, 74-2 CPD 367; Tosco Corporation, B-187776, May 10, 1977, 77-1 CPD 329; Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412.

The allegation concerning Dano's lack of financial capability involves Dano's responsibility as a prospective contractor. Because determinations of bidder responsibility involve business judgments which "are not readily susceptible to reasoned judicial review," Keco Industries v. United States, 492 F.2d 1200, 1205 (Ct. Cl. 1974), this Office no longer reviews protests of affirmative determinations of responsibility unless there are allegations that procurement officials engaged in fraud or did not apply definitive responsibility criteria, if any, contained in the solicitation. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Neither of these exceptions appears to be relevant here.

We note that King George alleges that the awarding of the contract will result in the District of Columbia's violating an outstanding court order concerning disposal of the District's sludge, and that the award "is in direct contempt" of the order and that District officials "could be held in contempt of court." Contempt of court matters, of course, are within the jurisdiction of the court, not this Office.

The protests are dismissed.



Milton J. Socolar
General Counsel